



Entered on Docket
January 22, 2008

[Signature] **-FILED**
1/15/08

Hon. Linda B. Riegler
United States Bankruptcy Judge

LEWIS AND ROCA LLP

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

Susan M. Freeman AZ State Bar No. 004199
Email: sfreeman@lrlaw.com
Rob Charles NV State Bar No. 006593
Email: rcharles@lrlaw.com

Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE COMPANY,
USA CAPITAL REALTY ADVISORS, LLC,
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
USA CAPITAL FIRST TRUST DEED FUND, LLC,
USA SECURITIES, LLC,

Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

Hearing Date: December 20, 2007
Hearing Time: 9:30 a.m.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

**ORDER REQUIRING SUPPLEMENTAL BRIEFING ON THE USACM TRUST'S
EIGHTH OMNIBUS OBJECTION TO CLAIMS ASSERTING A SECURED
STATUS AS IT PERTAINS TO THE CLAIM FILED BY JOHN DUTKIN**

Pending before the Court is the USACM Liquidating Trust's (the "USACM Trust") Eighth Omnibus Objection to Claims Asserting Secured Status (the "Objection") [DE 3147] as it pertains to the claim filed by John Dutkin (Proof of Claim No. 10725-01395) and the USACM Trust's Motion for Summary Judgment on that Objection (the "Motion") [DE 4291]. The Court heard oral argument on the Objection and the Motion on December 20, 2007. Based upon the record available, the Court lacks sufficient information upon which to make a ruling on the Motion and the Objection. Accordingly,

IT IS ORDERED:

- That the parties shall provide additional briefing to Court on the following issues:
 - 1) Are the funds that John Dutkin seeks to recover as part of his claim against USACM already at issue as part of the pending interpleader action;
 - 2) Did the Court enter an order under which USACM could have and/or should have honored the checks written to John Dutkin that were rejected by USACM post-petition;
 - 3) Is Dutkin's claim entitled to secured status based upon a constructive trust theory, or because USACM might have been acting as a fiduciary?
- That John Dutkin shall file its supplemental briefing by February 1, 2008;
- That the USACM Liquidating Trust shall file its supplemental briefing by February 10, 2008; and
- Resetting the matter for oral argument on February 21, 2008 at 9:30.

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4 PREPARED AND SUBMITTED:

5 LEWIS AND ROCA LLP

6 By: /s/ RC (#0006593)
7 Susan M. Freeman
8 Rob Charles
9 *Attorneys for USACM Liquidating Trust*

10 APPROVED:

11 GEORGE D. FRAME, Ltd.

12 By: *George D. Frame*
13 George D. Frame
14 *Counsel for John Dutkin, Trustee*

15 OFFICE OF THE U.S. TRUSTEE

16
17 August B. Landis, Esq.
18 Scott A. Farrow, Esq.
19 300 Las Vegas Boulevard, Suite 4300
20 Las Vegas, NV 89101
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22
23
24
25
26

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PREPARED AND SUBMITTED:

LEWIS AND ROCA LLP

By: /s/ RC (#0006593)

Susan M. Freeman

Rob Charles

Attorneys for USACM Liquidating Trust

APPROVED:

GEORGE D. FRAME, Ltd.

By: George D. Frame

George D. Frame

Counsel for John Dutkin, Trustee

APPROVED:

OFFICE OF THE U.S. TRUSTEE

August B. Landis, Esq.

Scott A. Farrow, Esq.

300 Las Vegas Boulevard, Suite 4300

Las Vegas, NV 89101

1 In accordance with Local Rule 9021, the undersigned certifies:

- 2 ☐ The Court waived the requirements of LR 9021.
- 3 ☒ I have delivered a copy of this proposed order to all attorneys and unrepresented
- 4 parties who have appeared at the hearing regarding this matter and/or who filed
- 5 a written objection and each has:
- 6 ☒ approved the form of this order;
- 7 ☐ waived the right to review the order;
- 8 ☐ failed to file and serve papers in accordance with LR 9021(c); and/or
- 9 ☐ failed to sign and return this proposed order within five (5) business days
- 10 in accordance with LR 9021(b).
- 11 ☐ I have delivered a copy of this proposed order to all attorneys and unrepresented
- 12 parties who appeared at the hearing regarding this matter and/or who filed a
- 13 written objection and all have either approved the form of this order, waived the
- 14 right to review the order, failed to file and serve papers in accordance with LR
- 15 9021(c) and the following have disapproved the form of the order.
- 16 ☐ No opposition was filed and no other party or counsel appeared at the hearing.

17 George D. Frame (Approved)

18 Counsel for John Dutkin, Trustee

19 August Landis (Approved)

20 *Office of the U.S. Trustee*

21 **LEWIS AND ROCA LLP**

22 By: /s/ RC (#0006593)

23 Susan M. Freeman

24 Rob Charles

25 *Attorneys for USACM Liquidating Trust*

26